

**IN UNITED STATES DISTRICT COURT  
DISTRICT OF DELAWARE**

**HARRY L. SAMUEL**

**Plaintiff,**

**v.**

**THOMAS CARROLL, ET. AL**

**Defendants,**

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**C.A. No. 05-037- SLR**

**JURY OF 12 DEMANDED**

**ANSWER OF DEFENDANT FIRST CORRECTIONAL MEDICAL IN RESPONSE TO  
PLAINTIFF’S FILINGS D.I. 2 and D.I. 34**

Defendant First Correctional Medical, hereinafter “FCM”, responds as follows to the allegations set forth in the plaintiff’s Complaints:

1. Wrongful conduct by answering defendant is denied and it is denied that any conduct by defendant proximately caused any injuries, illnesses, or damages of any nature to the plaintiff.
2. Denied that answering defendant breached a dental or medical standard of care.
3. Denied that answering defendant was deliberately indifferent to a serious medical need or in any way violated the plaintiff’s Eighth Amendment rights.

**AFFIRMATIVE DEFENSES**

4. Plaintiff fails to state a claim upon which relief may be granted.
5. Plaintiff fails to state a 42 U.S.C. §1983 claim against FCM.
6. The complaint fails to state a claim against defendant FCM upon which plaintiff may recover with respect to all claims for civil rights violations, including all claims under 42 U.S.C. §1983 and the 8<sup>th</sup> Amendment of the Constitution of the United States, as there is no vicarious

liability for civil rights claims.

7. The complaint fails to state a claim against FCM upon which plaintiff may recover with respect to all civil rights claims as FCM was not deliberately indifferent to a serious medical condition.

8. Plaintiff failed to properly plead a medical or dental malpractice action against FCM.

9. Plaintiff failed to file an affidavit of merit pursuant to 18 Del. C. § 6853.

10. FCM provided plaintiff with medical/dental care that was appropriate for his conditions and which met the applicable standards of care.

11. Plaintiff has failed to proffer any medical expert testimony or support for his claims of medical/dental negligence.

12. Plaintiff failed to exhaust his administrative remedies.

13. The Complaint fails to state a claim for punitive damages upon which plaintiff may recover.

**WHEREFORE**, the defendant FCM asks that the Complaint against it be dismissed with prejudice and all costs be assessed against the plaintiff.

**McCULLOUGH & McKENTY, P.A.**

/s/ Dana Spring Monzo

Dana Spring Monzo

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(302) 655-6749

Attorney for Defendant First Correctional Medical

Dated: June 29, 2006

**UNITED STATES DISTRICT COURT  
DISTRICT OF DELAWARE**

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**Plaintiff,**

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**CERTIFICATE OF SERVICE**

I, **DANA SPRING MONZO**, hereby certify that this date attached *Answer* was served to  
the following:

**Via Electronic Service**

**Kevin J. Connors  
1220 N. Market Street, Suite 500  
P.O. Box 8888  
Wilmington, DE 19899**

**Ophelia M. Waters  
820 N. French Street, 8<sup>th</sup> Floor  
Wilmington, DE 19801**

**Via U.S. Mail**

**Harry L. Samuel  
SBI# 201360  
Delaware Correctional Center  
1181 Paddock Road  
Smyrna, DE 19977**

**McCULLOUGH & McKENTY, P.A.**

/s/ Dana Spring Monzo

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